UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMPASS GROUP USA, INC., d/b/a
CHARTWELLS DINING SERVICES,

And **Cases 25–CA–134883**
25–CA–136328
25–RC–130359

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 700, AFL–CIO.

Caridad Austin and Rebekah Ramirez, Esqs.,
for the General Counsel

David K. Montgomery, Esq. (Jackson Lewis, P.C.), of Cincinnati, Ohio,
for the Respondent

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for the Union

DECISION
AND
REPORT ON OBJECTIONS

DAVID I. GOLDMAN, Administrative Law Judge. These combined unfair labor practice and representation objections cases arise out of a union representation campaign that culminated in the union's election defeat by a margin of seven votes. The government alleges that the employer violated the National Labor Relations Act (the Act) in two instances. First, by allegedly questioning an employee about her union activity and giving her the impression that union activity was under surveillance. Second, the government alleges that the employer violated the Act by issuing a verbal warning to an employee as a result of her protected conduct at a mandatory employee meeting. As discussed herein, I find that the allegation concerning the alleged interrogation and impression of surveillance is without merit and should be dismissed. However, I find that the employer violated the Act as alleged with regard to the verbal warning it issued to the employee after the mandatory employee meeting.

In addition, the union alleges that its objections to the employer's conduct during the election campaign should be sustained and the election set aside and a new election ordered. As discussed herein, I overrule the bulk of the objections and sustain two, one in part. Although there are but two sustained objections, and they are not as severe as those found in some campaigns, I do believe that in combination they warrant setting aside the election—the results of which would have been different if only four "no" voters voted "yes."

STATEMENT OF THE CASES

Case 25–RC–130359

On June 10, 2014,[1] the United Food and Commercial Workers Union, Local 700 (Union) filed a representation petition with the National Labor Relations Board (Board) indicating substantial employee support for the Union's desire to be certified as representative of a bargaining unit of employees working at the Anderson, Indiana facility of Compass Group USA, Inc. d/b/a Chartwells Dining Services (Employer or Respondent or Chartwells). The petition was docketed by Region 25 of the Board as Case 25–RC–130359.

The parties entered into a stipulated election agreement, approved by the Acting Regional Director on June 27 that set forth the following appropriate unit under the Act:

> All full-time and regular part-time food service workers, cooks, cashiers, leads, dishwashers, bakers, prep cooks and porters employed by the Employer at its Anderson, Indiana facilities; excluding all student employees, managers, office clerical employees, professional employees, confidential employees, and guards and supervisors as defined in the Act.

On August 26, a secret ballot representation election was held among employees in this unit. The revised tally of ballots[2] showed:

Approximate number of eligible voters	57
Number of void ballots	1
Number of votes cast for the Petitioner	18
Number of votes cast against participating labor organization	25
Number of valid votes counted	43
Number of unresolved challenged ballots	4
Number of valid votes counted plus challenged ballots	47
Sustained challenges (voters ineligible)	5

The challenged ballots were not sufficient in number to affect the outcome of the election. A majority of the valid votes counted plus challenged ballots were not cast for the Union.

On August 28, the Union filed objections to the election. Following an investigation, on November 26, 2014, the Acting Regional Director for Region 25 issued an order directing a hearing on Union Objections 1, 2, the part of Objection 4 pertaining to the discipline of Joyceanna Pettigrew, 8, 9, 10, and additional objectionable conduct alleged in unfair labor practice Cases 25–CA–134883 and 25–CA–12628. (As described below, in the same order, the Acting Regional Director consolidated these unfair labor practice cases for hearing with the Union's objections.)

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[1] Almost all events relevant to this decision and report on objections took place in 2014. Throughout, dates referenced are to 2014 unless otherwise stated.

[2] The tally of ballots was revised to incorporate the results of the parties' stipulation for resolution of challenged ballots approved by the Regional Director on December 17.

With the approval of the Acting Regional Director, the Union withdrew its Objections 3, the part of Objection 4 pertaining to the discipline of Dennis Smith, Objections 5–7, and Objections 11–16.

The Union and the Employer entered into a stipulation resolving the challenged ballots, which as noted, were not sufficient in number to affect the election's outcome.

Cases 25–CA–134883 and 25–CA–12628 and their consolidation with Case 25–RC–130359 for hearing

On August 18, the Union filed an unfair labor practice charge docketed by Region 25 of the Board as case 25–CA–134883 alleging violations of the Act by Chartwells. On September 9, the Union filed an unfair labor practice charge docketed by the Region as Case 25–CA–13628. Based on an investigation into the charges, on November 26, the General Counsel, through the Acting Regional Director for Region 25, issued an order consolidating the two unfair labor practice cases for hearing and a consolidated complaint alleging that Chartwells violated Section 8(a)(1) and (3) of the Act. By order issued December 19, the Acting Regional Director consolidated these unfair labor practice cases with Case 25–RC–130359.

A hearing was conducted in this matter on March 24 and 25, 2015, in Indianapolis, Indiana.

Counsel for the General Counsel and counsel for Chartwells and the Union filed post-trial briefs in support of their positions by April 29, 2015. On the entire record, I make the following findings, conclusions of law, and recommendations.

UNFAIR LABOR PRACTICES

JURISDICTION

Chartwells is and at all material times has been a corporation with offices and facilities in Anderson, Indiana, where it is engaged in the business of providing food services at Anderson University in Anderson, Indiana. In the past 12 months in conducting its business operations at Anderson University, Chartwells purchased and received at its Anderson, Indiana facility goods valued in excess of $50,000 directly from points outside the State of Indiana. Further, during the past 12 months, Chartwells, in conducting these business operations, derived gross revenues in excess of $1 million from its facility at Anderson University. Chartwells admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Union is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

I. FINDINGS OF FACT

Anderson University is located in Anderson, Indiana. Beginning in July 2013, Chartwells replaced another contractor at the University and began providing the food services to Anderson University. Chartwells employs approximately 60 employees at the Anderson University location, including food service workers, cashiers, dishwashers, cooks, bakers, and porters.

The Union conducted an organizing campaign in the spring of 2014 among Chartwells' Anderson University employees. As noted above, the Union filed a representation petition on June 10, 2014, and an election was conducted August 26, 2014.

Kellie Short has worked for Chartwells for five years, but has been the director of dining services at the Anderson University location only since May 2014. In that capacity she oversees all of the food service operations at the University, as well as financial matters and employee relations. She is the top-ranking Chartwells manager at the Anderson University location.

Dusten Tryon is the retail manager of the facility and reports to Short. Tryon is responsible for all the scheduling and the retail food service ordering.

Bill Breslin is Chartwells' director of labor relations. Breslin's office is located elsewhere, but he interacts occasionally with Short and with Chartwells' employees at Anderson University.

Short's supervisor is Regional District Manager Steve Bryant. Bryant oversees thirteen "accounts" in different locations around the State. Nick Macarelli was the regional district manager in 2014.

Tryon's conversation with Carter

Patricia Ann Carter was employed as lead cashier at Chartwells from July 1, 2012 through May 9, 2014. Her immediate supervisor was Dusten Tryon. When she learned of the Union's campaign in March 2014 she attended meetings and generally supported the Union.

Once in late March or April, Tryon and Carter were in the area "in the back . . . where stock is kept." They were, as Carter colloquially explained, "talking, just conversating." Tryon "mentioned the fact that there was a discussion going around about [ ] possibly starting a union." According to Carter, Tryon stated that "he really didn't feel like it was a good idea." Tryon stated that he thought that decisions about raises and benefits should "stay in the . . . managers' hands" and that unionization would take that away. Carter responded that she thought the Union was a "good idea because I felt that this company needed supervision" and that she "didn't really like the way the Company treated their employees. . . . [T[hey didn't listen to us as far as employees. They just kind of did what they wanted to do to you." According to Carter, Tryon 'didn't really say whether or not I was wrong or right . . . we were just voicing our opinions."[3]

The June 25 employee meeting: back-and-forth between Pettigrew and Short

Joyceanna Pettigrew was employed by Chartwells in the position of head baker from September 2013 to January 2015. Pettigrew was active in the Union's representation campaign.

Chartwells conducted an all-day mandatory "Fall Training" for employees on June 25 and 26, 2014, in a dining room on campus. Chartwells regularly holds such summer meetings, which are "like orientation," in preparation for the return of a full complement of university students at the end of the summer. Short had only recently—in May—become director at the Anderson University facility and she wanted to have the meetings as part of her introduction to the staff. In addition, Chartwells was now facing a union campaign—the representation petition had been filed June 10—and the meetings were an opportunity to speak to employees about the Union.

[3]Carter's is the only testimonial account of this conversation. Tryon did not testify.

During the meetings, employees sat around approximately seven round tables with approximately eight employees at each table. A range of subjects—from scheduling, to safety, to clothing were discussed. Short conducted the meeting from the back of the room, with some managers in the room and others coming in and out during the day to give presentations. Breslin headed the discussion about the Union. The agenda for the program included a range of topics scheduled throughout the day, titled, for example, "Rally the Troops," "Safety Moment" "Review Policies" and the "Union."

The meeting began around 9 a.m., June 25. Breslin addressed employees about the Union in the afternoon, giving the "why-nots" of management's view that employees should not support the Union.

According to Short, during a mid-morning discussion of policies and procedures, Pettigrew began, in Short's words, "badgering" her.[4] Short testified that during the meeting's discussion of meals and breaks it came up that management receives more meals and breaks than other employees. On this subject, according to Short, Pettigrew was "continually disruptive and disrespectful in front of all of the other associates, wanting more information and badgering me in regards to meals and breaks." The issue of scheduling conflicts was raised. At times, after Chartwells posted employee work schedules they would subsequently be changed and Pettigrew expressed concern that employees did not always know about the change. On this issue too, according to Short, Pettigrew "continued to be disruptive. I could not get a sentence out. . . . She was just extremely disruptive multiple times during that." Pettigrew was "waiving her hands in the air." Short testified that throughout the day Pettigrew "made little snide comments, very short underneath her breath" such as "say[ing] she can't wait until the Union is here."

Pettigrew and her co-employee Sybilla Bryson testified about these events. According to Bryson, when an employee complained during the discussion about coming to work only to find that the schedule had changed and she was no longer scheduled to work, Pettigrew and Bryson helped "clarify" the question for Short who, in Bryson's view, did not understand the question or the issue. Bryson testified that the third employee and Pettigrew said that "we would like to be called" if the schedule changes. Short's position was that "you need to check the schedule every day" before coming in to ensure that there has been no change. Pettigrew described the encounters similarly. She testified that Short told them that if schedules were changed "it was our responsibility" to keep up with whether there had been a schedule change and that Pettigrew told her "but at some point, Management has got to take responsibility if they are changing the schedule and not getting hold of us." According to Pettigrew, other employees were involved in the discussion too. Pettigrew denied yelling, or using any kind of foul language.

It turns out that Bryson recorded the meeting, and by agreement of all parties the tape, and an agreed-to transcript of a portion of the meeting involving the scheduling colloquy between Short, Pettigrew, and others, was introduced into the record. I have reviewed the recording. In addition, although it is somewhat lengthy, I reproduce the transcript because I believe it gives the reader a good sense of the exchange I heard on tape.

[4]Short initially recalled that the conflict with Pettigrew occurred "towards the afternoon." Later she testified that it occurred during a part of the meeting that began around 10 a.m. I credit the latter account. Pettigrew testified that the encounter with Short occurred after Breslin had spoken. Pressed on the issue, on cross-examination she agreed that it could have happened earlier. I find that it did.

Kellie Short: Okay, the attendance policy. Does everybody know the attendance policy? Alright, so it's on a point system, and what it is, is, if you leave early or you come into work late it's a half' of a point. Um, once you get to four points it's a verbal, fifth point it's a first, six points it's a second, and seven points it's termination. Okay? So hang on, so you get half a point, um, for being late. Late is considered, actually it used to only be five minutes, I've extended it a little bit. Um, and so if your late that's a half point, if you leave early that's a half point. Now this does not mean if you have it . . . um (unintelligible) approved through your manager then you can leave early, that's different. But if you come in that day and ask to leave early, that is not approved. Okay? It has to be prescheduled, pre-approved, to leave early and it does not count against you. Okay? Um . . . if you call off work, um, it's a point only if you don't have a sick day. If you have a sick day you can use your sick day, but when you call you have to say you want to use your sick time and you have to be sick. If you have a flat tire or if you've just decided you–don't want to come to work today that does not allow you for a sick day. Okay? Um, no-call no-show, if in your first ninety days one no-call no-show is termination and then after your ninety days two no-call no-shows are termination. Does anybody have any questions about the attendance policy? Yes . . .

Speaker #1: So in my case I brought in a doctor's note yesterday saying that I had a doctor' s appointment at 3:30 and I was unable to make it later in the day. (Unintelligible) Because I brought that in?

Short: Yep, because you brought that in, yep. And you let us know ahead of time.

(Unintelligible)

Speaker #2: I was on the schedule last week and I was hoping it was okay on Sunday if I didn't have to come in if I couldn't and I was not able to be here on that day and then . . . uh, I was also supposed to be on the schedule. I was on it actually to be here last week and then I came in and the schedule was all gone and I'm not on it and nobody let me know and even the managers that were here didn't know that I wasn't, didn't have to be here on. Sunday so they didn't know why I wasn't here on Sunday. No communication.

Short: Okay, well your supervisor should've let you know that, so you'll need to get with him. Um, we have had a lot of issues lately because unfortunately the camps have been guaranteeing set numbers to us and they're dropping tremendously. Um, I don't know if you know but like CIY the first week we had it in June, um, we were guaranteed a thousand people but only (unintelligible) showed up. That' s a huge profit loss for us and we can't staff if we don't have money to pay for it. Um, unfortunately the camps here at AU we've lost a lot of them, not we, AU has lost a lot of camps this year. It is very, very unfortunate to the school and to us. Um, and our numbers for the camps don't come in until a later time and so after they make the schedule sometimes we find out that the camps are going to be low and we can't staff them if-

(Unintelligible)

Speaker #2: Well, can't we all be called and told that it's been made different so we don't waste gas, time, money?

Short: Yes, you can, um, but it's actually yourself as the employee's responsibility to get your schedule. So if you need to call everyday or come in to make sure it's right then you can do that.

Joyceanna Pettigrew: But I think what she is saying is that it's always being changed-

Sybilla Bryson: So if it's changed overnight . . .

Pettigrew: It will say one thing and you come in the next day and it's completely different and nobody has told anybody.

Short: But your schedule is your responsibility to check. So you can call before you come in and make sure that it's right.

Pettigrew: I understand that, but if the schedule is already up and you know that you are supposed to be here, I mean, we're not supposed to get up every day and call, "Oh, I'm on the schedule today, am I still on the schedule?" Do you see what I'm saying?

Short: Well, schedules are subject to change, so yeah, they change at the last minute.

Bryson: So in the middle of the week, in the middle of the night, it can change (unintelligible) and that's fine?

Pettigrew: We're supposed to take time out of our schedule and stuff, like, and we are supposed to call and check to make sure our schedules not been changed?

Short: If you want to work, yeah.

Bryson: So you want us to call every morning, is that, true? You want us to call every morning and check -

Short: I'm not saying I want you to, I'm saying it's your responsibility to check your schedule so if you need to call in the morning then you need to call in the morning. I have asked the managers and the supervisors to call the employees and let them know when the schedule has changed. If this is not happening we can discuss it, but it is your responsibility, not ours, to check your schedule.

Pettigrew: Yes, but what I'm saying though is we are taking responsibility by looking at the time clock and finding out what times we are supposed to work. So if we look at the time clock and it says we are supposed to be here these certain days this week, I mean, how is it our responsibility, you know, if someone, if they come in and change it two days later and say we're off that day. You know? We already have the schedule that was already out, I mean, are we supposed to call everyday or come up everyday just to check our schedule to make sure it's not been changed?

Short: I mean, I wouldn't recommend that you come up here every day. That's you using your gas. That's why I'm saying you should call. During the school year the schedule is a little more standard but during the summer, unfortunately, it's out of our control.

Pettigrew: Well I'm even talking, like, through the school year. I mean, you know, the schedule changes all the time.

Short: Well, like I said I asked the managers and supervisors to call so if they haven't I can talk to your managers and supervisors. Obviously, I know who they are and ask them to call you again, but I'm just letting you know that initially it is your responsibility and if you want
to call first that is fine.

(Additional voices speaking)

Bryson: So, if the manager doesn't call would that still count against us? Or -

Pettigrew: (unintelligible) It's our responsibility to check the schedule to make sure (unintelligible) –

Short: Okay, so if you two want to take this out of the room and talk about it you can, but I'm trying to help the rest of the employees, so we're not going to discuss this in here anymore
.

Pettigrew: So what's the point of the meeting? That's what this is for right?

Short: It is, but you know, we are not going to battle back and forth between you two.

Bryson: Does anybody else want to hear the answer?

Speaker #3: I have a question -

Short: I'm talking to the whole group, yes.

Speaker #3: I have a question. I think the thing is, uh, if the manager is, uh, changing the schedule in the middle of the night, he has the responsibility to call.

Pettigrew: Exactly.

Speaker #3: (Unintelligible) It's supposed to be when you leave the place you know, "Okay, I'm scheduled for the next day at that time." That's it. Of course, if somebody changed that in the middle of the night, the manager has to call them to tell, you know, "Okay, tomorrow you're off. You were not off. You were scheduled at eight but now you are off."

Short: Obviously that's not happening with some of the managers and supervisors, so I need to talk to them is what I'm telling you.

Speaker #3: Oh yeah, that's what, if somebody calls me and say, "Okay, tomorrow you are not scheduled." Okay, that's fine. But if I am here and I am not scheduled, of course, it's the manager's responsibility if he did not call me because in the middle of the night somebody changed that, you know?

Short: Well, we don't change schedules in the middle of the night anyways but -

Speaker #3: Well, okay, exactly, but if that happened for any reason, you know, the manager -

Short: Yes, they change a lot. And, yes, like I said I asked managers and supervisors to call people -

Speaker #3: Exactly -

Short: And if they're not, um, I can discuss that with them but ultimately it is the employee's responsibility.

Later in the June 25 meeting—beginning at approximately 2:46 p.m. according to the transcript entered into evidence—Chartwells' Director of Labor Relations Breslin spoke to the employees regarding the union election process and explained Chartwells' opposition to unionization. As discussed separately, below, Chartwells distributed literature about the unionization and electoral process to employees at this time. Breslin asked for questions and a number of employees, including Pettigrew, asked questions and made comments.

June 26: Pettigrew's Letter to Short

On the morning of June 26, just before the day's rounds of meetings began at 9 a.m., Pettigrew provided Short with a letter stating that she was involved in "exercising my section seven rights under the National Labor Relations Act" and "will continue to do so." Pettigrew told Short when she handed her the letter that "Obviously, as of yesterday, you know that I am for the Union and I am just presenting you this letter to let you know that I am involved in organizing to get a union in here." Pettigrew added that it was "nothing personal" against Short or Short's boss Macarelli, "but I felt that the Company didn't treat us right, and that I think that the Union would help us and them as management." Short just said, "okay, thank you." That day, approximately six additional employees provided Short with a similar letter. The following day copies of these letters were faxed by the employees to Short.

July 1: Pettigrew is disciplined for her conduct at the June 25 meeting

In consultation with Breslin, Short decided to issue Pettigrew a verbal warning based on her conduct at the June 25 meeting. A June 28 email from Breslin to Short instructs Short to give Pettigrew and another employee, Sybilla Bryson, "the next step" of discipline—or a "verbal warning if this will be their first write up"—for their behavior at the June 25 meeting:

Give each of them (Joyceanna and Sybilla) the next step (verbal warning if this will be their first write up) for a performance infraction for use of abusive language and

interfering and disruptive behavior during a meeting. Have another manager present. Meet with each one separately.[5]

Short called Pettigrew into her office on July 1.[6] Short testified that she told Pettigrew that she was receiving the verbal warning because she had been disruptive and disrespectful at the June 25 meeting. According to Pettigrew, Short told her that she was receiving the warning because she was "rude and made everyone feel uncomfortable in the meeting."

Documentation of the warning, on a form entitled, "Associate Counseling Report," was prepared by Short prior to the meeting and kept in Pettigrew's personnel file. A copy was not provided to Pettigrew. It stated, in relevant part (in addition to listing Pettigrew's name, job title and the date of July 1, 2014):

PURPOSE OF CONFERENCE/WORK RULE VIOLATED: Abusive language and interfering and disruptive behavior during a meeting

DETAILED ACCOUNT OF INCIDENT RESULTING IN CONFERENCE: Verbal Warning

Any future issues regarding Abusive language and disruptive behavior may result in further disciplinary action

Although the verbal warning referenced "abusive language," Short testified that Pettigrew's offense "was more disruptive language" and she agreed that "there was no abusive language used by Ms. Pettigrew." She testified that the word "abusive" had been included in the discipline because Short drafted the verbal warning document based on the Employer's handbook rules, which defined one of the violations as "swearing or use of other abusive language." (There also had been no swearing.) Short testified that she also relied upon the rule prohibiting "threatening, intimidating, or interfering with Fellow Associates on Company and/or client premises." Both of these rules were level B infractions—"[s]erious [o]ffenses [w]hich[w]ill [n]ormally result in stern progressive counseling, possible suspension, or termination" (initial capitals omitted from original).[7]

[5]The record does not speak to whether Bryson was warned or disciplined. She testified but was not asked about it. Short does not mention it in her testimony. Although the General Counsel contends (GC Br. at 11) in his brief that Short admitted that she . . . discipline[d] Pettigrew (Tr. 24) and only Pettigrew," in fact, Short's testimony did not address whether she disciplined Bryson. Given my resolution of the case I need not and do not make any finding in that regard.

[6]Pettigrew testified that this meeting to discuss the warning was on June 27. Short testified that it was July 1. I credit Short's testimony that this occurred July 1. The meting out of the discipline on July 1 is consistent with the email between Breslin and Short, which was dated June 28, and with the July 1 date on the counseling report. The dispute over the date is of no larger significance.

[7]Category B offenses are mid-level offenses. More serious violations were listed in the handbook as Category A offenses, "that will normally result in termination." Less serious violations were Category C offenses, "that will normally result in progressive counseling" (initial capitals omitted).

While Short looked to the handbook offenses in writing this "verbal warning," she did not consider the "verbal warning" documentation to be part of the progressive disciplinary system. Consistent with this, in the place on Pettigrew's "Associate Counseling Report" to mark whether this discipline is first, second, or final progressive counseling, or discharge, nothing is marked. Short testified that this type of verbal warning tells the employee that "if it continues to happen, then it will go into progressive counseling, but at this time, it is just a warning to let her know where she stands and where I stand, and how we can move forward to partner better."

Pettigrew did not receive any further discipline in the subsequent months.

In the wake of her warning, Pettigrew asked some of the other employees if she had made them uncomfortable by her comments. When they asked her why, she told them that she had been disciplined for her comments in the June 25 meeting

There were subsequent mandatory meetings, largely devoted to voicing management's opposition to the Union, on August 18 and 25. Before the August 18 meeting Nick Macarelli, regional manager, to whom Short reports, told Pettigrew that she "wouldn't be disciplined as long as [she] was . . . not rude or impolite." During the meeting, Pettigrew voiced her opinion and disputed comments made by the speaker, Breslin, several times. She was not disciplined for her participation. Similarly, in the August 25 meeting, Pettigrew (and other employees) raised questions and made comments throughout the meeting without repercussion.

II. Analysis of the alleged unfair labor practices

A. Tryon's conversation with Carter

The General Counsel contends that Supervisor Dusten Tryon's conversation with Patricia Carter violated the Act by (1) creating an impression of surveillance of union activities and (2) constituting an unlawful interrogation about union activity. See, complaint pars. 5(a)(i) and (ii).

(i) Impression of surveillance

"The Board's test for determining whether an employer has created an unlawful impression of surveillance is whether, 'under all the relevant circumstances, reasonable employees would assume from the statement in question that their union or other protected activities had been placed under surveillance.'" *Metro One Loss Prevention Services*, 356 NLRB No. 20, slip op. at 14 (2010), quoting *Frontier Telephone of Rochester, Inc*., 344 NLRB 1270, 1276 (2005), enf'd. 181 Fed. Appx. 85 (2d Cir. 2006). "The essential focus has always been on the *reasonableness* of the employees' assumption that the employer was monitoring their union or protected activities." *Frontier Telephone*, supra at 1276 (emphasis in original).

Here, the allegation rests on the fact that in talking with Carter, Tryon "mentioned the fact that there was discussion going around about . . . possibly starting a union." He then proceeded to offer his view of why "he really didn't feel like" a union "was a good idea." Carter offered her opinion that the Union "was a good idea."

Nothing in Tryon's statements suggested that Tryon had heard anything about Carter or any other specific individual being involved in union activity. Nothing in Tryon's statements suggested that he knew anything about the conduct or existence of union meetings, attendance, or anything about union activity other than that there was "discussion going around" about employees "possibly starting a union." Tellingly, I think, the General Counsel cites not one case

in support of his claim that Tryon's statements demonstrate an impression of surveillance. GC Br. at 7–8. Although the source of Tryon's information that "discussion is going around" is not articulated, the phrasing, "discussion going around" does not, to my mind, and with nothing else, reasonably lend itself to an assumption of monitoring. If anything, the phrasing "going around" suggests that the discussion he references had been open. Without more, what appears to be an introduction to Tryon's voicing of his opinion against unionization cannot be found to have created a reasonable impression of surveillance.

(ii) Interrogation

The General Counsel also argues, citing *Rossmore House*, 269 NLRB 1176, 1177 (1984), aff'd. 760 F.2d 1006 (9th Cir. 1985), that Tryon's conversation with Carter constituted an unlawful interrogation of Carter about union membership, activities and/or sympathies, in violation of Section 8(a)(1) of the Act.

The problem with this allegation is that there was no questioning by Tryon. He stated that there had been discussion about the possibility of a union "going around" and then proceeded to state his views on why a union was not "a good idea." As described by Carter, the conversation did not contain a single question from Tryon. The General Counsel argues that Tryon's statements were "designed to elicit [Carter's] response confirming or denying her union sympathies." GC Br. at 7. I do not agree. Carter described a conversation in which she voluntary voiced her opinion in response to Tryon voicing his opinion. Tryon's statement of his opinion does not constitute an interrogation of Carter. In any event, Carter's account, including her voluntary and truthful response to Tryon's expression of his view, along with her description of the nature of the discussion, suggests a lack of coercion, not its presence. I do not find that she was interrogated, much less coercively, in this conversation.[8]

B. The verbal warning given to Joyce Pettigrew

The government alleges that the verbal warning issued to Pettigrew for her conduct during the June 25 mandatory meeting violated the Act. Although argued together, the General Counsel offers three separate theories in support of this claim.

First, the General Counsel contends that the Respondent disciplined Pettigrew for engaging in activities protected by Section 7 of the Act, namely, along with other employees, disputing employment practices that were being discussed at the meeting. Under this theory, the General Counsel alleges that the verbal warning violated Section 8(a)(1) of the Act. See complaint ¶¶ 6(a), (b) and 7. Second, in a (super) closely-related allegation, the General Counsel alleges that *telling* Pettigrew she was being disciplined for her protected and concerted activities independently violates Section 8(a)(1) of the Act. See complaint ¶¶ 5(b) and 7, and GC Br. at 13. Finally, the General Counsel alleges that the warning to Pettigrew was motivated by and in retaliation for her union activity and to discourage employees for engaging in protected activity in violation of Section 8(a)(3) of the Act. See complaint ¶¶ 6(b), (d) and 8.

[8]Given my findings I do not reach the Respondent's contention that the allegations involving Carter and Tryon were not the subject of an unfair labor practice charge and should be dismissed on that ground.

As discussed below, I believe it is clear that the Respondent violated Section 8(a)(1) of the Act by issuing a verbal warning to Pettigrew for protected and concert conduct engaged in during the June 25 meeting. The General Counsel's second claim is not really a separate claim: inherent in warning an employee for engaging in protected and concerted activity is telling them about it—and telling the employee that she is to change her protected conduct interferes with Section 7 rights in exactly the same way as issuing the discipline. In any event, I decline to reach this second allegation (which is based on complaint ¶5(b)) as such a finding would not materially affect the remedy. In addition, I do not reach the General Counsel's allegation that the warning given to Pettigrew violated Section 8(a)(3) of the Act. Given my finding of an 8(a)(1) violation, the additional violation also would not materially affect the remedy. *Kingsbury, Inc.*, 355 NLRB 1195, 1195 fn. 1 (2010).

The General Counsel argues that Pettigrew was engaged in protected activity and was disciplined for conduct that was part of the course of her protected activity. The Respondent admits that the verbal warning it gave to Pettigrew was a result of her conduct at the June 25, 2014 meeting. However, the Respondent claims that (R. Br. at 14) that it was "Pettigrew's disrespectful and insubordinate conduct . . . not her alleged protected activity" that was the basis for the discipline.[9]

An employee's misconduct may well provide a basis for lawful discipline—even while engaged in protected activity.[10] But contrary to the implicit argument of the Respondent, the misconduct cannot be considered in isolation without reference to the protected activity.

To the contrary, "the Board has long held that in the context of protected concerted activity by employees, a certain degree of leeway is allowed in terms of the manner in which they conduct themselves." *Health Care & Retirement Corp.*, 306 NLRB 63, 65 (1992), enf't. denied on other grounds, 987 F.2d 1256 (6th Cir. 1993), aff'd. 511 U.S. 571 (1994); *J.W. Microelectronics*

[9]The Respondent also argues (R. Br. at 14) that the verbal warning does not constitute discipline as no penalty was imposed and it does not count as a mark against the employee in the Respondent's progressive discipline policy. However, in addition to the fact that the written record of the verbal warning is maintained in Pettigrew's personnel file, Short admitted that the purpose of the verbal warning is to lay the groundwork for formal progressive discipline counseling if the employee continued to engage in the same behavior. Tr. 121–122. After a warning, the employee "goes on to a first progressive counseling." Tr. 122; see also, Tr. 121 ("A verbal warning is something that I start with to let the team member know where they stand . . . and that . . . if it continues to happen, then it will go into progressive counseling"). Breslin's June 28 email also makes this clear ("Give each of them . . . the next step (verbal warning if this will be their first writeup) for a performance infraction"). Board precedent is settled that oral warnings constitute "discipline" when they "lay a foundation" for future discipline." *Oak Park Nursing Care Center*, 351 NLRB 27, 28 (2007) ("it is clear that the counseling forms are a form of discipline because they lay a foundation, under the progressive disciplinary system, for future discipline against an employee"); *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004), enf'd. in relevant part 205 Fed. Appx. 405 (6th Cir. 2006). The Respondent disciplined Pettigrew.

[10]The "fact that an activity is concerted . . . does not necessarily mean that an employee can engage in the activity with impunity." *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 837 (1984). "[T]here is a point when even activity ordinarily protected by Section 7 of the Act is conducted in such a manner that it becomes deprived of protection that it otherwise would enjoy." *Indian Hills Care Center*, 321 NLRB 144, 151 (1996). See *NLRB v. Washington Aluminum, Co.*, 370 U.S. 9 (1962).

Corp., 259 NLRB 327 (1981), enf'd. mem. 688 F.2d 823 (3d Cir. 1982) ("It is well settled, however, that not every impropriety committed in the course of Section 7 activity deprives the offending employee of the protection of the Act"). "The protections Section 7 afford would be meaningless were we not to take into account the realities of industrial life and the fact that disputes over wages, hours, and working conditions are among the disputes most likely to engender ill feelings and strong responses." *Consumer Power Co.*, 282 NLRB 130, 132 (1986).

Thus, in considering the General Counsel's claim, the first inquiry is whether Pettigrew was engaged in protected activity at the June 25 meeting and, specifically, whether the actions for which she was disciplined were part of this protected activity. If so, I must then consider whether the conduct for which she was disciplined was so egregious as to cause her to lose the protection of the Act, and thus permit the employer to lawfully punish her for otherwise protected activities.

Clearly, Pettigrew was engaged in protected and concerted activity when she—along with other employees—responded to Short's discussion of meal breaks and scheduling by asking questions and raising concerns about Chartwells' practices and policies on these subjects. These subjects, of course, are central to the Act's concern with "terms and conditions of employment." It is well settled that the discussion of these issues in mandatory meetings conducted by management is protected employee activity. See e.g., *The Modern Honolulu*, 361 NLRB No. 24 slip op. at 2, 13 (2014) (employee engaged in protected activity at mandatory meeting by raising questions about gossiping that the employer's manager had told employees not to engage in); *Avery Leasing, Inc.*, 315 NLRB 576, 580 fn. 5 (1994) ("where an employee in the presence of other employees, complains to management concerning wages, or other terms and conditions of employment, such complaints constitute protected concerted activity"); *Enterprise Products*, 264 NLRB 946 (1982) (employee remarks about an employer's plan to give employees entertainment tickets rather than a raise).

Having found that Pettigrew was engaged in protected activity, the issue, then, is whether in the course of engaging in her protected conduct Pettigrew's conduct was so egregious that she lost the protection of the Act.

"[A]n employee's otherwise protected activity may become unprotected if in the course of engaging in such activity, [the employee] uses sufficiently opprobrious, profane, defamatory, or malicious language." *Honda of America*, 334 NLRB 746, 747 (2001) (internal quotation omitted). However, "'the standard for determining whether specified conduct is removed from the protections of the Act [is] as articulated by the Board: communications occurring during the course of otherwise protected activity remain likewise protected unless found to be so violent or of such serious character as to render the employee unfit for further service.'" *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204–205 (2007) (Board's bracketing) (approvingly quoting *Dreis & Krump Mfg. v. NLRB* 544 F.2d 320 (7th Cir. 1976) (internal quotations omitted)), enf'd. 519 F.3d 373 (7th Cir. 2008). Accord: *United Cable Television Corp*., 299 NLRB 138, 142 (1990) (in order for an employee engaged in such activity to forfeit his Section 7 protection his misconduct must be so "flagrant, violent, or extreme" as to render him unfit for further service) (citing *Dreis & Krump Mfg*., 221 NLRB 309, 315 (1975), enf'd. 544 F.2d 320 (7th Cir. 1976)). As the Board has explained, the "congressional guarantees embodied in Section 7 of the Act would be jeopardized if every act of disrespect or insubordination emerging from a protected dispute which divides management from its work force, renders the employee involved as fair game for discipline." *F.W. Woolworth Co.*, 251 NLRB 1111, 1114 (1980), enf'd. 655 F.2d 151 (8th Cir. 1981). Thus,

> A line must be drawn between situations where employees exceed the bounds of lawful conduct in a moment of exuberance or in a manner not activated by improper motives and those flagrant cases in which misconduct is violent or of such serious character as to render the employee unfit for further service. The employee's right to engage in concerted activity permits some leeway for impulsive behavior, which must be balanced against the employer's right to maintain order and respect. Where the conduct occurs in the course of protected activity, the protection is not lost unless the impropriety is egregious.

Kingsbury, Inc., 355 NLRB at 1204 (internal quotations and citations omitted).

In this case, Pettigrew's conduct does not come close to losing the protection of the Act. As to the scheduling discussion, Short characterized Pettigrew as "extremely disruptive multiple times during that," and stated that she (Short) "could not get a sentence out." What Short means by this, we can learn from the recording and transcript of the scheduling dispute, which reveal nothing that fairly can be called "misconduct," much less egregious misconduct. One might—and I stress might—say that Pettigrew was persistent on the subject, perhaps overly so, but this is hardly conduct that approaches the edge of the Act's protection. It is to be remembered that her questions and the discussion was very much a part of the meeting and intended to be so. There was no yelling, cursing, or ill-mannered behavior. After being told that this issue was no longer to be discussed, the sum of Pettigrew's comments are "So what's the point of the meeting? That's what this is for right?" Other than that, Pettigrew's only further comment was to say "Exactly" in response to a point on the subject made by another employee.

Short also testified that the verbal warning was based on Pettigrew's conduct when the discussion concerned meals and breaks. However, no recording or transcript of that portion of the meeting was introduced into evidence. Short described Pettigrew as "badgering" during this portion and "continually disruptive and disrespectful in front of all of the other associates," and "wanting more information." We have no more detail than this characterization, but I believe it likely, and I conclude, that Pettigrew's "disruptive" behavior in that portion of the meeting was similar to her allegedly "continued . . . disruptive" behavior during the attendance/scheduling portion of the meeting. And in that, there is nothing even remotely approaching misconduct "of such serious character as to render the employee unfit for further service." *Dreis & Krump*, supra at 329.

The Board recently reiterated in *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 3 (2014), that in analyzing whether an employee's face-to-face interaction with a supervisor or manager constitutes conduct so opprobrious that the employee loses the protection of the Act, "[t]ypically, the Board has applied the *Atlantic Steel* factors," drawn from *Atlantic Steel*, 245 NLRB 814 (1979). The *Atlantic Steel* analysis includes consideration of the following factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. *Atlantic Steel*, supra at 816.

Although I am not convinced that Pettigrew's conduct can even be called "misconduct" for which we need assess whether she has "crossed the line," application of the *Atlantic Steel* factors confirms that Pettigrew's conduct did not exceed the bounds of the Act's protection. First, the discussion took place away from "production." It occurred, for sure, in front of other employees, but it was at a meeting at which employees were supposed to listen to management and speak back to them on issues of common concern. In this regard the subject matter of the discussion

for which Pettigrew was disciplined—meal breaks and attendance/ scheduling—were the very subjects raised by management for discussion and she made her comments at a time germane to the discussion. Moreover, in the context of an *Atlantic Steel* analysis—in *Atlantic Steel* the employee called his supervisor "a lying s.o.b"—here, the nature of Pettigrew's "outburst" cannot be held against her. This was not a case where the employee's comments involved obscenities, mockery, threats, yelling, or aggression directed against anyone. Clearly, Short felt that she did not receive the respect she deserved, but this appears to have been a function of Pettigrew's persistence rather than the substance of her comments or even her tone. Finally, while Pettigrew's comments were not "provoked" by any misconduct—unfair labor practice or otherwise—by the Respondent, this alone cannot render Pettigrew's active engagement in protected activity during the June 25 meeting an offense for which she can be disciplined.

In sum, I find that the Respondent violated Section 8(a)(1) of the Act by issuing Pettigrew a verbal warning for her conduct at the June 25 meeting.

OBJECTIONS TO CONDUCT AFFECTING THE ELECTION

I. Introduction

As stated above, in Case 25–RC–130359 the Union filed objections to conduct affecting the election alleging that during the critical period—i.e., between the filing of the petition and the election (*Ideal Electric Mfg. Co.*, 134 NLRB 1275 (1961))—the Employer engaged in conduct that interfered with employee free choice. The Regional Director directed a hearing on the Union's Objections 1, 2, the part of Objection 4 pertaining to the discipline of Joyceanna Pettigrew, 8, 9, 10, and additional objectionable conduct alleged in unfair labor practice Cases 25–CA–134883 and 25–CA–12628.

These extant objections, and a summary drawn from the Regional Director's Report of evidence offered in support, and the briefing by the Union, are as follows:

1. **Distributing anti-union literature to employees that contained a threat of job loss if the Union won the election.**

   In support of this Objection, the Union contends that during the critical period the Employer distributed literature containing threats of job loss if employees voted for the Union.

2. **Distributing anti-union literature to employees that contained a promise of benefits and other terms and conditions of employment if the employees voted not to have [the Union] represent them.**

   In support of this Objection, the Union contends that during the critical period the Employer distributed literature containing promises to employees of wage increases and other improvements that are objectionable

4. Disciplining employee [ ] . . . Joyceanna Pettigrew because of [her] support for the Union and other protected concerted activities.

This objection is the conduct alleged by the General Counsel as an unfair labor practice in paragraph 6 of the consolidated complaint in this matter.

8. Telling employees at a captive audience meeting that Anderson University faculty members and students are not happy if the employees leave their jobs to vote.

9. Telling employees at a captive audience meeting that they can decertify the Union in one year if they "screw up" and vote to have [the Union] represent them.

10. Telling employees at a captive audience meeting that they could only vote on their breaks, or before or after their work shift.

In support of these three objections, the Union contends that during the critical period, at a mandatory meeting for employees conducted by the Employer on August 18, Short and Breslin made objectionable comments. Specifically, and as discussed below, the Employer's allegedly objectionable comments included:

Informing employees that the Anderson University faculty members and students would not be happy if the employees left their jobs to vote in the NLRB election (Objection 8);

Telling employees that they can decertify the Union in one year if they "screw up" and vote in favor of representation by the Petitioner (Objection 9); and

Telling employees that they could only vote on their breaks, before their work shift, or after their work shift (Objection 10).

Additional Objectionable Conduct

The Regional Director concluded that the other objectionable conduct to be addressed in the hearings includes the conduct alleged by the General Counsel as an unfair labor practice in paragraph 5(b) of the consolidated complaint, which the Regional Director concluded "may have occurred" during the critical period.

As set forth above, the Union's extant Objections are 1, 2, part of 4 (the Pettigrew discipline), 8–10, and possible "additional objectionable conduct" alleged as an unfair labor practice in paragraph 5(b) (the Carter-Tryon conversation)

As to paragraph 5(b), as discussed above, not only was the employer's alleged unlawful conduct not proven, there was nothing objectionable in the exchange between Carter and Tryon. Further, by all accounts it precedes the critical period by two months. Accordingly, that objection is overruled.

I consider the remaining objections below.

II. The Disciplining of Pettigrew (Objection 4)

The extant portion of Union Objection 4 concerns the disciplining of Pettigrew. As I have found above, this conduct constituted a violation of the Act. It was committed during the critical period. As such it must be considered objectionable.

However, while this is suggestive of a tendency to, a fortiori, interfere with the exercise of free choice in the election (see, *Playskool Mfg. Co.*, 140 NLRB 1417 (1963); *Diamond Walnut Growers, Inc.*, 326 NLRB 28, 29 (1988)), there are exceptions. Not every unfair labor will warrant setting aside an election. *Caron International*, 246 NLRB 1120 (1979); *Clark Equipment Co.*, 278 NLRB 498, 505 (1986). After considering the Union's other objections, I will turn, below, to the issue of whether the sum of objectionable conduct in this case requires the setting aside of the election.

III. Chartwells' antiunion literature (Objections 1 and 2)

During the union campaign, Chartwells distributed an extensive amount of literature to employees about unions, the election, and the unionization process. As a whole, it is fair to say it was designed to express management's opposition to unionization, provide arguments why employees should vote against the Union, and explicitly ask employees to vote against union representation.

Union Objection 1 is directed to certain portions of the handouts or mailings that allegedly threaten job loss if the Union won the election. Objection 2 is directed to portions of the mailings and handouts that allegedly contain a promise of benefits if employees voted against union representation.

A. Union Objection 1: threats of job loss

The Union (U. Br. at 2–3) identifies the following alleged threats of job loss in the literature. I have bolded the portions the Union identifies as objectionable, but for purposes of providing context, reproduced the full section in which the allegedly objectionable portion is set.

(i) Chartwells distributed a 16-item question-and-answer handout to employees at the June 25 mandatory meeting. It included the following statements:

HANDOUT—QUESTIONS & ANSWERS

1. Q: *Why Is the Company fighting the union?*

A: The Company is fighting the union because we do not think a union is necessary or beneficial to your best interests or the Company's**. Many union demands, if fulfilled, could result in the Company being non-competitive in its services or products. This may result in fewer jobs. When the Company says "no" to demands, the union may strike**. These situations are not in the best interest of all of us.

* * * * * *

7. Q: *Does the union prevent discharges, layoffs,* or *strikes?*

A: NO. **If you look at union represented plants there are many discharges, layoffs and strikes**.

* * * * * *

13. Q: *What are the union objectives?*

A: **Most unions seek to obtain in bargaining a union shop agreement which requires that all employees join and maintain good standing in the union. If they do not, they will be fired.** The union also seeks a check-off provision which means the employer will automatically deduct your union dues from your paycheck. The unions also normally seek super seniority for the shop stewards. This means that the individuals selected by the unions to serve as stewards will go to the top of the seniority list for layoff purposes.

14. Q: *Won't I automatically get more money if the union wins the election?*

A: NO. Union demands for more money are negotiable. The can Company can always say, "NO". With or without a union, the Company will grant fair wages consistent with its ability to pay and with comparable wages in the locality. Special monetary inducements such as incentives, bonuses, and the like are often forbidden in union contracts. **Even if the union contract calls for more money, if the wages are pegged too high, there may be fewer jobs.**

(Emphasis added.)

(ii) A mailing to employees on July 31 stated:

PLEASE VOTE NO

* * * * *

Do **YOU** need to pay monthly dues so someone will ask for benefits? Can YOU not ask for them yourselves? Do **YOU** believe that now that Kellie Is the Manager that she will

address your needs when she Is legally able to do so? Can **YOU** give Kellie a chance?

Do YOU know in your heart that our client In this area, who happens to be mostly UNION-FREE, will keep our Company and YOUR job no matter what happens?

(iii) A mailing to employees on August 15 stated:

PLEASE VOTE NO

WHAT HAPPENS IF . . .

* * * * *

3. The Union **WINS** the election?

A. The Company pledges to abide by the law and sit down and negotiate with the Union to reach a new Collective Bargaining Agreement.

B. The Union will meet with us to negotiate a contract.

C. Our clients will...???

You know our clients much better than I do ... what will be their reaction to all of this??

Which of the option above make the most logical choice to **YOU**?

PLEASE VOTE NO!!

(bolding added, but the underlined material and the centered heading and conclusion were in each instance bolded in the original).

Analysis of Objection 1

Under the principles set out by the Supreme Court in *National Labor Relations Board v. Gissel*, 395 U.S. 575 (1969):

> An employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit." He may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased *on the basis of objective fact* to convey an employer's belief as to *demonstrably* probable consequences beyond his control. . . .

395 U.S. at 580 (emphasis added).

These principles are designed to prevent employers from making dire predictions that are merely veiled threats by requiring that such predictions be based on objective facts likely to lead to consequences beyond the employer's control.

This standard leaves available to employers a form of argumentation applied here: recite the possibility of job loss from unionization but expressly explain the many objective facts that must occur before the job loss could be possible. The explanation of the conditions and qualifiers

serves to dilute the force of the prediction but also avoids the reasonable likelihood of interference with free choice.

Thus, the statement that many union demands in bargaining "if fulfilled," "could result" in the Employer being noncompetitive, and "[t]his may result" in less jobs. As an abstractly stated proposition, this is true, as are many other possibilities. Similarly, if any employer says no to union demands, the union could call a strike. That is, indeed, a possibility and this abstract reference to a basic feature of the way the Act works cannot be deemed objectionable. See *Intertape Polymer Corp.*, 360 NLRB No. 114, slip op. at 13 (2014) (not objectionable to tell employees that strikers are a part of the collective bargaining process). There is certainly no suggestion in Chartwells' literature that a strike will be required in order for a union (or the employees) to obtain any concessions. See, *Novi American, Inc.*, 309 NLRB 544, 544 (1992). In the same vein, the Employer's statement that "Even if the union contract calls for money, if the wages are pegged too high, there may be fewer jobs" is, particularly in the full context of the paragraph in which it is in, a nonobjectionable statement that unrestrained wage rates "may" affect the number of available jobs. It is not reasonably understood to be a threat by the employer to reduce jobs as a result of unionization or collective bargaining.

The Union also objects to the Employer's assertion that "Most unions seek to obtain in bargaining a union shop agreement which requires that all employees join and maintain good standing in the union. If they do not, they will be fired." Of course, this is a flat misstatement of the law, doubly so in Indiana, which has been a right-to-work state since 2012. However, such misstatements are not objectionable under Board precedent. *John W. Galbreath & Co*., 288 NLRB 876 (1988).

The Union's objection to the statement that "at union represented plants there are many discharges, layoffs, and strikes" is a classic case of taking a statement out of context. In context, the statement is an answer to the question "does the union prevent discharges, layoffs and strikes?" The answer is that it does not—and compared to the suggestion in the question that a union can prevent *all* discharges, layoffs, and strikes—there are, indeed, many discharges, layoffs, and strikes at union-represented facilities.

Finally, the Union objects to two statements in the Employer's literature that raise the question of how the "customer," i.e., the University, will respond to unionization. One statement—actually a question—asks employees if they know "in [their] heart" that the customer "who happens to be mostly UNION-FREE" will "keep our company and YOUR job no matter what happens." The other states that if the Union wins the election the Employer will abide by the law and negotiate to reach a new collective bargaining agreement, and then states "Our client will . . .???" <u>You</u> know our clients much better than I do . . . what will be their reaction to all of this??"

I find merit to the Union's objection as it relates to these statements. Unlike the previous statements, these statements raise the issue of job loss (in the latter instance by reasonable implication) based on—nothing. The Employer does not purport to have any knowledge at all that would lead them to question the University's willingness to tolerate unionization. It is not satisfactory for the Employer to protest that it has merely asked the question. The Employer—not the employees—is the one with the contractual relationship with the University. To claim that employees "know our clients much better" is not true in terms of the issue mooted. To raise the specter that the "UNION-FREE" university will not "keep our company and YOUR job" in the event of unionization requires, under *Gissel*, the articulation of objective fact on which to base the concern. If the Employer had knowledge that unionization might not be tolerated by the University it was required to have said so. If it did not then the issue should not have been

raised, for it constitutes a threat of job loss without the safeguards for opinion and prediction set forth in *Gissel*. See *McDonald Land & Mining Co.*, 301 NLRB 463, 466 (1991 (finding statement that creditors, upon learning that employees favored unionization, "might get nervous and decide to throw us [into] Chapter 11" violated Sec. 8(a)(1)); *SPX Corp.*, 320 NLRB 219, 221–222 (1995) (rejecting employer's argument that its reference to the "possibility" of customers retrenching on work if employees unionized rendered suggestion nonobjectionable); *Tellespen Pipeline Services Co.*, 335 NLRB 1232, 1233 (2001) (employer had no basis for connecting a union election victory even to mere possibility of customer cancelling contract).[11]

B. Union Objection 2: promises of benefits (and other terms and conditions)

The Union (U. Br. at 3) identifies the following alleged promises of benefits (and other terms and conditions) in the literature. I have bolded the portions the Union identifies as objectionable, but for purposes of providing context I have reproduced the full section in which the allegedly-objectionable portion is set.

(i) From the June 25 question-and-answer handout:

14. Q: *Won't I automatically get more money if the union wins the election?*

A: NO. Union demands for more money are negotiable. The can Company can always say, "NO". **With or without a union, the Company will grant fair wages** consistent with its ability to pay and with comparable wages in the locality. Special monetary inducements such as incentives, bonuses, and the like are often forbidden in union contracts. Even if the union contract calls for more money, if the wages are pegged too high, there may be fewer jobs.

(Emphasis added.)

[11] I note that Chartwells did not pursue this objectionable theme during employee meetings. Indeed when, in the August 25 meeting, Breslin was directly asked whether the University could "get rid of Chartwells . . . because they don't want a union here," Breslin responded:

> No I mean they can do that with a union or no union. . . . [A]s far as I know every one of our food service accounts have a 90 day cancellation clause. So for whatever reason all the [sic] most of our clients have to do is give us 90 day notice and we are out. It has nothing to do with union not union. . . . I can't speak for Anderson University . . . [I] have no knowledge for example [ ] if they have unions with their folks most . . . university/college settings are liberal so they don't do that in many cases . . . . But you're asking me can they? They can get rid of us [ ] without having to have a [bona fide] reason for releasing our contract.

Apart from whether these comments mitigated the objectionable statements in the mailings (discussed below), they demonstrate that the Employer had no objective basis for suggesting in the mailings that unionization could result in an adverse reaction from the university that would threaten jobs and/or the Employer's contract.

(ii) From the August 15 mailing to employees:

PLEASE VOTE NO
WHAT HAPPENS IF . . .

* * * * *

2. The Union **Loses** the election?
A. The group may re-petition with this or any Union after twelve (12) months.

B. **The group will "Give Kellie A Chance" and will see what she is able and/or willing to do to improve conditions once she is legally permitted to.**

(bolding in original except for paragraph B, which has been bolded for emphasis)

Analysis of Objection 2

It is objectionable conduct to promise employees that they will receive improvements in their terms and conditions of employment if they reject the Union. However, "Generalized expressions . . . asking for 'another chance' or 'more time,' have been held to be within the limits of permissible campaign propaganda" and found not to be objectionable. *National Micronetics*, 277 NLRB 993, 993 (1985). See also, *Purple Communications*, 361 NLRB No. 43 (2014) (distinguishing *National Micronetics* because employer's statements were linked to specific issue of productivity standards).

Here the suggestion is that if the Union loses the election then employees will see what Short is "able and/or willing to do to improve conditions" once the legal barriers to improvements posed by the campaign are removed. This does not offend Board precedent.

Short had assumed the position as head of dining services very recently, in May 2014, a few weeks before the filing of the representation petition on June 10. The "Give-Kellie-A Chance" theme relied upon the newness of her position and essentially asked employees to allow her time to show them what she could do to improve conditions. But the Give-Kellie-a-Chance theme involved "no specific promise" about change in "any particular matter." *Noah's New York Bagels*, 324 NLRB 266, 267 (1997). It was no more of a specific promise than that deemed non-objectionable in *National Micronetics*, supra at 993, where the employer told an employee during a discussion of the union that there was "a lot to look forward to" and that employer was aware that it "had neglected to keep up with other companies in the past and asked [the employee] to give them a second chance to see if they could make things better." See *Noah's Bagels*, supra (not a violation of Act for employer to tell employees "Please vote to give us a second chance to show what we can do. If we don't meet your expectations, the Teamsters will be there").[12]

[12]The cases relied upon by the Union (U. Br. at 5) in support of this objection are inapposite. Those cases involve express *employer solicitation* of employees as to what changes it should make to "prevent or correct problems," and a finding of an implicit promise to remedy the solicited grievances. See *Evergreen America Corp.*, 348 NLRB 178, 215 (2006), enf'd. 531 F.3d 321 (4th Cir. 2008), and *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), enf'd. 457 F.2d 503 (6th Cir. 1972). Here, there was no solicitation by the Employer seeking to have employees identify problems for the Employer to remedy.

Similarly, in context, it is not objectionable for the Employer to pose and answer "no" to a question about whether employees automatically receive "more money" if the Union wins the election, by stating that the Union demands will be negotiable and that "With or without a union, the Company will grant fair wages consistent with its ability to pay and with comparable wages in the locality." This broad promise to pay fair wages "with or without the union" (and if with a union subject to negotiations) is, in essence, the opposite of an implicit or explicit threat to penalize employees for choosing union representation or an implicit or explicit promise to offer a benefit to employees if they rejection unionization.[13]

Union Objection 2 is overruled.

IV. Chartwells' August 18 meeting (Objections 8–10)

As set forth above, the Union objects to the following statements alleged to have been made at the August 18 mandatory meeting by Chartwells' representatives.

> Informing employees that the Anderson University faculty members and students would not be happy if the employees left their jobs to vote in the NLRB election (Objection 8);
>
> Telling employees that they can decertify the Union in one year if they "screw up" and vote in favor of representation by the Petitioner (Objection 9); and
>
> Telling employees that they could only vote on their breaks, before their work shift, or after their work shift (Objection 10).

Pettigrew recorded the meeting and a transcript of the recording, the accuracy of which was stipulated to by the Employer and Union (Tr. 79), and was admitted into evidence as Union Exhibit 3.

The meeting covered a lot of subjects related to the prospect of unionization. Breslin led the meeting, but other supervisors also spoke up in an impromptu fashion, as did numerous employees, including employees making prounion comments and those making comments against unionization.

I will not attempt to summarize the meeting here. Its most direct relevance is to Union Objections 8–10. In that regard, I set forth here the following portions of the transcript relevant to the Union Objections.

> Bill: . . . . again I just recommend that everybody vote. You have a vote, use it. [If] You truly don't know what to do go in there and don't vote anything but I suggest you vote no. [I]f something happens that doesn't work out or it does and you choose not to pay dues whatever and in a year, a year and a day you can try and hire this union or some other union perhaps one that specializes in more in food service and if you think 'gee they'd didn't clean their problems up. We gave Kellie a chance and we didn't like the way it worked out. We just as, we

[13] I note that the Union does not argue and I do not find that this statement constituted a threat of the futility of unionization.

respectfully ask that you consider voting . . . vote no. Give Kellie a chance. Let us straighten things out all you've got is about a year.

Joyceanna: It ain't got nothing' to do with Kellie, I mean Kellie . . . this started before Kellie got here.

Bill and Joyceanna talking over each other—

Cathy: It's the company!

Joyceanna: This ain't got nothing to do with management.

Sybilla: We like Kellie!

Joyceanna: We like Kellie but managers come and go and she still has to abide by corporate too.

-a lot of people inaudibly bickering for a few seconds, everyone talking over each other-
Sybilla: shouting YAY! Kellie!

-applause and cheering-

* * * * *

Sybilla: I had a quick ... If we're in a meeting all of us and then we are going to be voting directly afterward how are we going to make lunch?

Woman's voice: Mondays the meeting and Tuesdays the vote.

Sybilla: okay.

Kellie: and when you vote you can't go like during if you['re] supposed to be working downstairs and there is like a line of students you can't just run up here and vote. You need to do it on your break, or at your meal or before or after you come in.

Sybilla: Really? So we have to be off the clock in order to vote?

Bill: No you'll be covered but you can't just leave your post.

Kellie: you can't just leave your station to come up here and vote.

Bill: if there's like 8 of you working on a tray line or something this may not make sense because I'm not familiar with your operations but if 8 of you are on the line and they let one or two of you go at a time then it doesn't take that long you go in and

Kellie: we'll have to have you covered is what I'm saying and I just don't want everybody to –inaudible- because we're going to get in trouble with the university

because they know what's going on and they know it's happening but they're not going to

-interrupting voices-

Joyceanna: but a lot of the faculty and staff here and a lot of the students have been coming up to me saying "i hope you guys get it"

Nick: she wasn't talking about that- she was talking about.

Kellie: I'm saying they aren't going to be happy if everybody leaves their job.

Joyceanna: no they won't be happy with that.

-laughing-

Nick: like we said everybody has an opinion.

Cathy: I don't think any of us are ignorant enough to do that anyway walk away because the students are our priority. They're [our] heart.

Kellie: Everyone knows.

Bill: but make sure you get to vote. If you have that same line of 8 of you and it's like 2 o'clock and nobody has voted yet obviously you need to go.

Kellie: We want everybody to go.

Bill: We'll schedule you so everybody gets to go but again if you choose not to when you go in just go in, sign in, drop a blank. Again it's your vote might as well use it you're going to be paying for it whether it be for just a year and not getting what you think you might have coming to you and then next year you can decide okay we screwed up and we're gonna vote yes this time or it'll be-

loud phone ringing and laughter

Bill: Alrighty it must be time. Thank you. See you next time.

Analysis of Objections 8–10

These objections should be overruled. Objection 8 suggests that Chartwells discouraged employees from voting by telling them that the university faculty and students would not be happy if they left their jobs to vote. However, the stipulated transcript of the comments demonstrates that, to the contrary, Breslin encouraged the employees to vote. Short's expression of concern that employees not leave their lunch stations en masse at the same time so that students and faculty could not be fed was reasonable logistical concern and was explained in those terms, and followed by admonitions that "We want everyone to go" vote.

Objection 9 concerns the alleged comment to the effect that if employees "screw up" and vote in favor of representation they can decertify in a year. I do not see such a statement in the

transcript (which is the sole evidence of what was stated at this meeting). There is a reference by Breslin in the transcript to the effect that if employees reject the Union and feel, in a year, that they "screwed up" by doing so, they can bring in the Union at that time. That is not objectionable. In any event, even if the alleged statement had been made, I would not deem it objectionable. (I note that the Union offers no argument why it would be.)

Finally, Objection 10 is similar to Objection 8: in Objection 10 the Union alleges that Chartwells told employees they could "only vote on their breaks, before their work shift, or after their work shift." Based on the transcript, set forth above, that is not the message that Chartwells conveyed.

V. Impact of objectionable conduct on the election

Having found that the Employer engaged in certain objectionable conduct, I must determine whether that conduct warrants setting aside of the election.

The objectionable conduct consists of Pettigrew's verbal warning, which was found to be an unfair labor practice, and the statements in a July 31 and August 15 mailing to employees that questioned—without any objective basis—how the University would react to unionization.

As to the Section 8(a)(1) Pettigrew discipline, it is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period. The exception is where the misconduct is de minimis such that it is virtually impossible to conclude that the election outcome has been affected. *Purple Communications*, 361 NLRB No. 43, slip op. at 5 (2014); *Bon Appetit Management Co.*, 334 NLRB 1042, 1044 (2001); *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786–1787 (1962). "In determining whether misconduct could have affected the results of the election, the Board has considered the number of violations, their severity, the extent of dissemination, and the size of the unit." *Bon Appetit*, supra.

With regard to objectionable conduct that has not been found to be an unfair labor practice, such as the mailings to employees here, the standard is slightly different: the issue is whether "the misconduct here, taken as a whole, warrants a new election because it had "the tendency to interfere with the employees' freedom of choice" and "could well have affected the outcome of the election." *NYES Corp.*, 343 NLRB 791, 791 fn. 2 (2004).

Were there no other objectionable conduct, I might well be inclined to find that the verbal warning to Pettigrew was de minimis, and reject the Union's argument that the election results should be set aside. This sole unfair labor practice occurred two months before the election. It involved only one employee, Pettigrew. It did not occur in front of other employees. The evidence of dissemination is vague: Pettigrew testified that she told "a few" employees about the incident right after it occurred. Moreover, as the Employer points out, the transcripts of the subsequent mandatory meetings from August, the same month as the election, show that employees, including Pettigrew, continued to participate in the meetings in a robust manner. In pointing this out, I do not intend to depart from the "objective" standard under which the Board assesses election interference.[14] Yet the continued participation (and observance) of Pettigrew

[14]In considering the election issue, "[t]he standard is an objective one—whether the challenged conduct has a reasonable tendency to influence the election outcome." *Sunrise Rehabilitation Hospital*, 320 NLRB 212, 212 (1995); *Cambridge Tool & Mfg.*, 316 NLRB 716, 716 (1995) ("The test, an objective one, is whether the conduct of a party to an election has the tendency to interfere with the employees' freedom of choice").

and other employees in the mandatory meetings does, indeed, have a reasonable tendency to further dilute the likelihood that Pettigrew's June discipline could have affected the election results. At the same time, I should point out that Pettigrew's participation in these subsequent meetings was conducted under the cloud of Regional Manager Nick Macarelli's warning to her before the August 18 meeting that she "wouldn't be disciplined as long as [she] was . . . not rude or impolite." That is a warning that compounds the likelihood of the chilling effect of the original unfair labor practice and heightens the force of the objection. See *Karl Knauz Motors, Inc.*, 358 NLRB No. 164 (2012) ("courtesy" rule is overbroad and employees would reasonably construe its prohibition as encompassing Sec. 7 protected activity).[15]

In any event, even if, standing alone, it would be "virtually impossible to conclude that the election outcome has been affected" by this objection, it does not, in fact, stand alone.

In addition the Employer also sent out two separate mailings to the entire bargaining unit, on July 31 and August 15, which included unwarranted questioning—without any objective basis—of how the University would react to unionization. This included, in one instance, explicitly questioning whether, in light of unionization, whether the University "will keep our Company and YOUR job." This objectionable conduct was put in writing and disseminated to the entire bargaining unit. It raised the prospect that unionization could result in job loss, and is the type of threat which is reasonably likely to interfere with a free election. I note that the election was not decided by a wide margin. A change in four votes out of the 43 counted could have changed the outcome. This is a relatively small number given that the offending mailings were sent to every employee.

As I have recognized, when directly asked in the August 25 meeting about whether unionization could result in the University terminating Chartwells, Breslin answered in a wholly nonobjectionable way, rejecting the suggestion that the University's retention of the Employer turns on the union or nonunion status of the Chartwells employees ("It has nothing to do with union not union").

Unfortunately, the Employer's literature did not treat the issue in the same manner. Breslin's oral remarks occurred the day before the election. And this mitigates, to some extent, the impact of the objectionable mailing, and, indeed, makes this a closer case.

However, in contrast to Breslin's oral remarks, the written literature twice sent to employees' homes could be read as many times as the recipient chose and even just before heading to work the day of the vote. Indeed, it is possible that the objectionable statements in the literature prompted the employee's question in the meeting about the impact unionization would have on Chartwells' contract with the University.

While Breslin's comments at the meeting were salutary, the subject is incendiary. "[E]mployees . . . are particularly sensitive to rumors of plant closings." *Gissel*, 395 U.S. at 619. As the Board and the Supreme Court have recognized, the coercive effect of particular statements can endure and outweigh other noncoercive employer statements: "an employee might reasonably be influenced by a more coercive statement than by a different noncoercive statement, in order to avoid adverse consequences." *Federated Logistics*, 340 NLRB 255, 256 (2003) (citing *Gissel*, 395 U.S. at 617), review denied 400 F.3d 920 (D.C. Cir. 2005). Certainly

[15] *Karl Knauz Motors*, supra, is not precedential as it was decided by a panel in which two of the three members were not appropriately appointed. See *NLRB v. Noel Canning*, __ U.S. __, 134 S.Ct. 2550 (2014). However, I think the reasoning is persuasive.

the Board would not consider an unfair labor practice unlawfully threatening a customer's retaliation for unionization to be remedied or cured by a statement like Breslin's, as his comments did not reference or repudiate the offending literature or assure employees that the statements would not be repeated. See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978) (employer may cure an unlawfully coercive statement by making an explicit, "unambiguous, specific" repudiation of it and assuring employees that no such violation will occur again).

In aggregate, I conclude that the Employer's objectionable conduct, the 8(a)(1) disciplining of Pettigrew, but more importantly, the unjustified suggestion in its two mailings that unionization could negatively impact the Employer's contract and the employees' jobs with the University, had a reasonable tendency to affect the election results, which, as noted, required only four employees to change their vote in order to affect the result. Under these circumstances, I find that the election results should be set aside and a new election ordered.

CONCLUSIONS OF LAW

1. The Respondent Compass Group USA, Inc. d/b/a Chartwells Dining Services is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, United Food and Commercial Workers Union, Local 700, AFL–CIO (Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act, and engaged in objectionable conduct during the critical period, on or about July 1, 2014, through Director of Dining Services Kellie Short, by issuing discipline in the form of a verbal warning to employee Joyceanna Pettigrew for engaging in protected and concerted activity.

4. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent engaged in objectionable conduct during the critical period, on or about July 31 and again on or about August 15, by mailing information to employees that suggested—without objective basis—that unionization could negatively impact the Employer's contract and the employees' jobs with the University.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist there from and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully disciplined employee Joyceanna Pettigrew, on or about July 1, 2014, must remove from its files, including Pettigrew's personnel file, any reference to the discipline and shall thereafter notify her in writing that this has been done and that the unlawful actions will not be used against her in any way.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted at the Respondent's facility wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic

means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2014. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 25 of the Board what action it will take with respect to this decision.

For the reasons discussed above, I have found that the Respondent engaged in objectionable conduct that requires setting aside the election conducted August 26, 2014, in Case 25–RC–130359, and that a new election be held on the terms set forth immediately below.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended direction of second election and order.[16]

DIRECTION OF A SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period ending immediately before the date of the Notice of Second Election, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by United Food and Commercial Workers Union Local 700, AFL–CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[16]If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent Compass Group USA, Inc., d/b/a/ Chartwells Dining Services, Anderson, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Disciplining employees for engaging in protected and concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of this order, remove from its files including Joyceanna Pettigrew's personnel file, any reference to her discipline issued on or about July 1, 2014, and within 3 days thereafter notify Joyceanna Pettigrew in writing that this has been done and that the discipline will not be used against her in any way.

(b) Within 14 days after service by the Region, post at its facility in Anderson, Indiana, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the election in Case 25–RC–130359 is set aside, and that a new election shall be conducted at a date and time to be determined in the discretion of the Regional Director. The second election shall be conducted in a manner consistent with the "Direction of Second Election" set forth above.

Dated, Washington, D.C. July 14, 2015

_____
David I. Goldman
U.S. Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discipline you for engaging in concerted activities protected by the National Labor Relations Act.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL remove from our files any reference to the unlawful oral warning we gave to Joyceanna Pettigrew and WE WILL within 3 days thereafter, notify her in writing that this has been done and that our unlawful conduct will not be used against her in any way.

COMPASS GROUP USA, INC., d/b/a
CHARTWELLS DINING SERVICES
(Employer)

Dated _____ By _____

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

575 North Pennsylvania Street, Room 238, Indianapolis, IN 46204-1577
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25-CA-134883 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (612) 348-1770